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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUN 25 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

The Telephone Consumer
Protection Act of 1991

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CC Docket No. 92-90

**REPLY COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA**

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The Newspaper Association of America ("NAA"), formerly the American Newspaper Publishers Association,¹ hereby replies to the opening comments on the Commission's Notice of Proposed Rulemaking in this proceeding to implement the Telephone Consumer Protection Act of 1991 ("TCPA").²

In opening comments filed by its predecessor ANPA, the NAA urged the Commission to:

- Recognize the importance of telemarketing to newspapers;

¹ The NAA, formed by the June 1, 1992, merger of the ANPA, the Newspaper Advertising Bureau, and several other newspaper organizations, represents more than 1,700 member newspapers. The majority are daily newspapers accounting for more than 90 percent of the circulation in the United States. Membership also includes many non-daily U.S. newspapers and other newspapers published in the Western Hemisphere, Europe and the Pacific. Several hundred individuals and companies allied with the newspaper industry are associate members of NAA.

² FCC 92-176 (Apr. 17, 1992), summary published 57 Fed. Reg. 18,445 (1992) ("Notice"). The TCPA amended the Communications Act of 1934 by creating a new Section 227. Pub.L. No. 102-243, 1991 U.S. Code Cong. & Admin. News (105 Stat.) 2394 (to be codified at 47 U.S.C. § 227).

- Adopt, at least in the case of newspapers, company-specific "do not call" lists to protect telephone subscriber privacy at the least cost;
- Clarify that an "established business relationship" includes a relationship between a newspaper and its current or lapsed subscribers and its advertisers; and
- Exempt the use of autodialers with prerecorded messages for debt collection purposes.

Well over sixty individual newspapers and group owners filed comments in the opening round of this proceeding. Those comments provide ample additional record support for positions we described in our comments, and we continue to urge that the Commission reflect the needs of the newspaper business in the regulations it ultimately adopts.

I. THE NUMEROUS OPENING COMMENTS FILED BY NEWSPAPERS CONVINCINGLY DEMONSTRATE THAT THE COMMISSION SHOULD ADOPT A COMPANY-SPECIFIC DO NOT CALL RULE TO PROTECT CUSTOMER PRIVACY, AS LEAST AS TO NEWSPAPERS

The comments submitted by over sixty newspapers in this proceeding demonstrate the importance of telemarketing to newspapers. As the New Orleans Times-Picayune states: "telemarketing -- done well -- is a critically important tool in our industry."³

Numerous comments from newspapers large and small establish that in many instances well over half of a newspaper's subscribers become so as a result of

³ Comments of The Times-Picayune at 1 (filed May 20, 1992).

telemarketing. Some newspapers commented that telemarketing accounts for as many as 95 percent of their new subscribers.⁴ These comments provide ample record support for the Commission to recognize the importance of telemarketing to newspaper circulation.

The commenting newspapers also provided many examples of their telemarketing practices. All comments by newspapers of which we are aware urged the Commission to adopt customer-specific Do Not Call (or "DNC") lists as the means to protect customer privacy. In language typical of these comments, the Kalamazoo Gazette/Weekly Gazette stated: "we have responsibly developed a list of customers and potential customers who have asked us not to call them."⁵

The comments also confirm that newspapers have strong incentives to maintain and honor such lists. As The Baltimore Sun stated: "Unlike 'boiler room' operations who come and go, The Baltimore Sun is a fixture in the community

⁴ See Comments of The (Jersey City) Jersey Journal at 1 (filed May 27, 1992); accord Comments of the Orlando Sentinel at 1 (filed May 22, 1992) ("in excess of 90% of all new customer starts"); Comments of the (State College, PA) Centre Daily Times at 1 (filed May 18, 1992) ("approximately 95% of all new starts"); Comments of the San Francisco Newspaper Agency at 1 (filed May 21, 1992) ("over 90 percent of our total new home delivery subscriptions"). See also Comments of Gannett Co., Inc. at 2 (filed May 26, 1992) ("up to eighty-five percent of Gannett's new newspaper subscriptions are a direct result of telemarketing").

⁵ Comments at 1 (filed May 26, 1992); accord Comments of the Thomasville (GA) Times-Enterprise at 1 (filed May 19, 1992); Comments of the Detroit Newspaper Agency at 1 (filed May 27, 1992) (stating that it "already maintain[s] a "not-to-be-called list. When a person tells us he or she does not wish to be contacted, we honor that request").

and has a vested interest in not upsetting the same people we depend on to buy our paper."⁶ The comments indicate that few telephone customers ask their local newspaper not to call again.⁷ Furthermore, the comments also support NAA's position that telephone customers do not generally regard a telemarketing call from a newspaper as intrusive as other types of telemarketing.⁸

The comments also confirm that the Commission should adopt rules exempting prerecorded calls to residences that do not affect the privacy interests that the TCPA intended to protect and do not include the transmission of any

⁶ Comments at 2 (filed May 27, 1992); accord Comments of The Grand Island (NE) Independent at 1 (filed May 27, 1992); Comments of the (Lafayette, IN) Journal and Courier at 1 (filed May 26, 1992) ("It does not serve our position as a community leader to be overly aggressive or uncooperative. The Journal and Courier has been a member of the community for over 150 years and we respect the standards of our community. If we do not operate within the boundaries of its tolerance and expectations, we would damage our credibility").

⁷ See Comments of The Indianapolis Star and The Indianapolis News at 1 (filed May 21, 1992) (0.1 percent); Comments of the Kalamazoo Gazette/Weekly Gazette at 1 (filed May 26, 1992) (0.5 percent).

⁸ See Comments of the (Springfield, MA) Union-News and Sunday-Republican at 2 (filed May 27, 1992). Thus, U S WEST is incorrect in suggesting that there is no basis for establishing different rules for local telephone solicitations by holders of second-class mail permits, which include newspapers. See Comments of U S WEST Communications, Inc. at 6, n.16 (filed May 26, 1992). The record supports the conclusion that the great majority of telephone customers simply do not regard newspapers in the same category as intrusive telemarketers, and that newspapers have strong incentives to respect the wishes of those who ask not to be called.

unsolicited advertisement.⁹ Such an exemption could apply, for example, to newspapers that use prerecorded messages for debt collection purposes.¹⁰ In addition, the Commission should clarify that the occasional use of a prerecorded "please hold for a live operator" message which does not itself contain a commercial solicitation is exempt from the autodialer ban.¹¹

Company-specific DNC lists work successfully in the newspaper business.¹² A national database is simply unnecessary in the newspaper business and, indeed, would be unduly burdensome for what are essentially local solicitations.¹³ Accordingly, the Commission should adopt

⁹ See Pub. L. No. 102-243, 1991 U.S. Code Cong. & Admin. News (105 Stat.) 2394, 2396 (to be codified at 47 U.S.C. § 227(b)(2)(B)).

¹⁰ See Comments of The Spokesman-Review/Spokane Chronicle at 1 (filed May 27, 1992).

¹¹ See Comments of Cox Enterprises, Inc. at 5 (filed May 26, 1992).

¹² See, e.g., Comments of The Montgomery Advertiser at 1 (filed May 26, 1992); Comments of the Detroit Newspaper Agency at 1 (filed May 27, 1992). For this reason, LeJeune simply overstates the case significantly in broadly asserting, in advocating a national database, that DNC lists have not received "widespread use or acceptance." Comments of LeJeune Associates of Florida at 29 (filed May 26, 1992). The contrary is plainly the case in the newspaper business.

¹³ See Comments of The Idaho State Journal at 1 (filed May 21, 1992) (a national database would put "an undue burden on . . . small rural daily newspapers"); Comments of The Jersey Journal at 1 (filed May 27, 1992) ("A national list with all its costs and administrative burdens is unnecessary since we have demonstrated that a less intrusive company based list can serve the needs of the public and allow us to continue our business on a fair and efficient basis").

the company-specific Do-Not-Call alternative, at least for newspaper solicitations, as the best and most reasonable alternative for protecting subscriber privacy.

II. THE COMMISSION SHOULD ENSURE THAT TELEMARKETERS HAVE REASONABLE ACCESS TO LISTS OF PROHIBITED NUMBERS

The Southern New England Telephone Company ("SNET") mentioned in its comments the possibility that telemarketers using autodialers could inadvertently access an emergency line fed from a conventional seven digit number.¹⁴ This situation illustrates the importance of telemarketers that may use an autodialer to have a means of identifying numbers that they are not to call, including emergency numbers, hospital rooms, and cellular and paging subscribers.

Cellular companies generally obtain complete "NXX" codes from local exchange telephone companies, although sometimes they may obtain merely a block within a particular NXX code. Paging companies likewise obtain an NXX code or a block. Hospitals with direct inward dialing also customarily have a block of numbers. In order for telemarketers to be able to comply with the Act's restrictions against autodialing these numbers, a means must exist by which these numbers can readily be made available.

¹⁴ See Comments of The Southern New England Telephone Company at 9-10 (filed May 26, 1992). This could occur, for example, where a seven-digit number at a police station automatically feeds into an emergency line.

Since local exchange telephone companies administer the North American Numbering Plan in their service areas, only they are in a position to distribute the lists of numbers which the Act prohibits from being dialed. In adopting rules in this proceeding, the Commission should ensure reasonable access to lists of the prohibited numbers.

In its comments, SNET stated that it could provide to telemarketer-maintained databases or company DNC lists numbers it has arranged for processing of emergency calls;¹⁵ there is no apparent reason why the other LECs cannot as well. Nor does there appear to be any reason the LECs could not provide lists of cellular, paging, and other numbers to which the Act prohibits autodialer calls as well.

III. CONCLUSION

For the foregoing reasons, the Newspaper Association of America respectfully requests the Commission to acknowledge the important role of telemarketing by newspapers and to

¹⁵ Comments of SNET at 10.

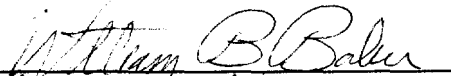
implement the Telephone Consumer Protection Act of 1991
consistent with the views set forth in these comments.

Respectfully submitted,

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